

DECISION

new file

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-211251**DATE:** July 6, 1983**MATTER OF:** Civil Aeronautics Board--Denied Boarding
Compensation Rules**DIGEST:** GAO is aware of no statute which would prohibit airlines from charging Federal agencies which requisition space aboard already-full carriers not only the fare for the seat or seats requisitioned but also the compensation which the airlines must pay the bumped passenger.

The Civil Aeronautics Board (CAB) requests our opinion on whether Federal agencies are precluded by any statute or regulation from paying an airline more than the specified price of the seat or seats when it makes a mandatory space requisition that forces the airline to "bump" a passenger with confirmed reservations, and pay him appropriate compensation under CAB "denied boarding compensation" rules. We are aware of no such prohibition under the circumstances described.

On October 7, 1982, the CAB amended its denied boarding compensation rules, which prescribe minimum standards for the treatment of airline passengers holding confirmed reservations who are not accommodated because the airline oversold their flight, ER-1306, Docket 39932, October 7, 1982. Prior to this amendment, the rules did not require that the carrier compensate passengers who were denied boarding due to Government requisition of space aboard the aircraft. 14 C.F.R. § 250.6 (1982). The CAB explained its rationale for deleting this exception to the denied boarding compensation rules as follows:

"Today, when a Government agency requisitions space on an already-full plane, denying compensation to passengers who are bumped seems inconsistent with the broad policy underlying these oversales rules. The basic rationale is compensation of the passenger, not punishment of the airline. Furthermore, the airline need not suffer from this change in any event.

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Where Federal rules require an airline to compensate a passenger bumped by Government requisition, the airlines has full justification for requiring the requisitioning agency to pay the whole cost of the taking--the passenger's compensation as well as the basic payment for the requisitioned space. Thus this amendment merely requires the Government to pay the full cost of this action."
(47 Fed. Reg. 52985 (November 24, 1982).)

According to the CAB, the airlines objected to the deletion of this exception on the grounds, inter alia, that the CAB had not previously "required government agencies to pay these higher amounts for full-plane space requisitions." The CAB replied that it had assumed, in the absence of some supervening statutory provision, that the airlines were free to charge U.S. Government agencies reasonable amounts, and that where carriers were required to compensate bumped passengers, higher amounts would be reasonable. The Board notes that it in fact assumed that "the real cost of the 'taking' would be normal under the basic assumptions of our legal system."

As noted above, we do not know of any statute or rule which prohibits Federal agencies from paying more than the specified fare level when they make mandatory space requisitions that result in direct financial losses to the airline, in addition to the price of the seat. Indeed, the Fifth Amendment of the United States Constitution, which prohibits the taking of private property for public use without just compensation, appears to require that the Government reimburse an airline from which it requisitions a seat the full cost of that seat. The "full cost," in the event that a passenger has been bumped, is equivalent to the fare for the seat plus the amount which the airline is required to pay to the displaced passenger. We note, by way of analogy, that 46 U.S.C. § 1242(a), which provides for the requisition of vessels owned by U.S. citizens during times of national emergency, requires that the owner of any such vessel be justly compensated for the use of his property.

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In conclusion, we think that a requisitioning agency may legally be charged an amount equivalent to the fare for a seat, plus the compensation which the airline is actually required to pay to any passenger who is displaced by such requisition. Of course, if CAB rules permit and the airline is able to induce volunteers to give up their seats in exchange for some lesser benefit,--i.e., less than the amount which CAB rules require for passengers involuntarily bumped--only the lesser amount may be charged to the agency, in addition to the fare.

Milton J. Aocular

Acting Comptroller General
of the United States